82-1154

NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BOROUGH OF SAYREVILLE, JOHN E. CZERNIKOWSKI, RANIERO TRAVISANO, KENNETH W. BUCHANAN, SR., WILLIAM JACKSON, JOSEPH M. KEENAN, JR., THOMAS R. KUBERSKI and FELIX WISNIEWSKI,

Petitioners,

vs.

MIDDLESEX COUNTY UTILITIES AUTHORITY and WILLIAM FRENCH SMITH, UNITED STATES ATTORNEY GENERAL, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Questions Presented

1. Whether the Tenth Amendment to the United States Constitution is violated by the federal government requiring a municipality to enact a particular tax.

Parties to the Proceedings

Borough of Sayreville; John E. Czernikowski, Mayor; Raniero Travisano, Kenneth W. Buchanan, Sr., William Jackson, Joseph M. Keenan, Jr., Thomas R. Kuberski, Felix Wisniewski, as members of the Borough Council of the Borough of Sayreville, petitioners-defendants-third party plaintiffs.

Middlesex County Utilities Authority, respondent-plaintiff.

William French Smith, United States Attorney General; Anne M. Gorsuch, Administrator, United States Environmental Protection Agency; Jacqueline Schafer, Regional Administrator, Region II, United States Environmental Protection Agency and W. Hunt Dumont, United States Attorney, respondents-third party defendants.

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Petitioners, Borough of Sayreville, John E. Czernikowski, Raniero Travisano, Kenneth W. Buchanan, Sr., William Jackson, Joseph M. Keenan, Jr., Thomas R. Kuberski, and Felix Wisniewski respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in this proceeding on October 12, 1982.

Opinions Below

Petitioners request review of a portion of the decision of the United States Court of Appeals for the Third Circuit reported at 690 F.2d 358 (1982).

The decision of the United States District Court for the District of New Jersey was a bench opinion and unreported. The transcript of the District Court's opinion is reproduced in the Appendix at p. 24a, *infra,* and the Judgment Order at p. 31a, *infra.*

Jurisdiction

The judgment of the United States Court of Appeals for the Third Circuit was entered on October 12, 1982. This petition for certiorari has been filed within 90 days of the date of said judgment. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1), which states:

> "cases in the courts of appeals may be reviewed by the Supreme Court . . .
>
> (1) by writ of certiorari granted upon a petition of any party to any civil or criminal case, before or after rendition of judgment or decree. . . ."

Constitutional Provisions Involved

The Tenth Amendment to the United States Constitution provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to States respectively, or to the people."

Statement of the Case

This is an action instituted by the Middlesex County Utilities Authority (MCUA) in New Jersey Superior Court alleging breach of contract by defendant Borough of Sayreville and seeking injunctive relief to compel action by the individual defendants in their capacity as the voting members of the Borough Council with authority to enact ordinances. It was alleged that the Borough had breached a contract with MCUA under which it was required to obey all pertinent federal regulations necessary for MCUA to obtain funding for the building of a waste water treatment facility which would handle the sewerage from Sayreville and numerous other municipalities in the region.

Defendants filed a third party Complaint against William French Smith, Attorney General of the United States, and various other federal defendants alleging that the requirement that recipients of federal funds utilize a special tax solely for the purpose of raising the funds needed to meet its obligations to provide adequate funding for the operation of a waste water facility built with federal monies was unconstitutional in that it violated the Tenth Amendment reservation of powers to the States. The third party federal defendants then had the matter removed to the United States District Court for New Jersey pursuant to 28 *U.S.C.* §1441(a) and 28 *U.S.C.* §1446.

The Borough of Sayreville has never contested its obligation to pay its fair share of MCUA's costs of operating the facility. Unlike other municipalities, Sayreville has more than adequate funds available to it from already existing taxes to meet its obligation in full without imposing additional, unneeded levies on its citizens, and has in fact always made its payments in a timely fashion. Nevertheless, although the administrator of the Environmental Protection Agency (EPA) in 1976 approved MCUA's grant

application, four years later, after advancing 80% of the promised funds, EPA suspended further payments. The reason given was that Sayreville and one other municipality serviced by MCUA, Milltown, had not adopted ordinances providing for user charges as per 33 *U.S.C.* §1284 (b)(1) [§204(b)(1) of the Federal Water Pollution Control Act (FWPCA)].

Both the federal third party defendants and plaintiff MCUA made motions for summary judgment in the United States District Court. Judge Debevoise granted the third party defendants' motion, upholding the constitutionality of the FWPCA requirement and thereby dismissing the case as to them. However, he refused to rule on the motion by MCUA and remanded that portion of the case to New Jersey Superior Court. Judgment was subsequently rendered in the New Jersey court requiring Sayreville to pass the appropriate ordinance, and the Appellate Division of Superior Court affirmed. Sayreville has filed a petition for certification with the New Jersey Supreme Court.

On appeal from that portion of the District Court Order granting summary judgment in favor of the third party defendants, the Third Circuit affirmed the judgment of the District Court.*

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* Apart from the Tenth Amendment argument presented by this petition, Sayreville also raised the claim of denial of equal protection of the law. That claim is not being urged before this Court.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to determine whether the Tenth Amendment is violated when the federal government requires a municipality or other unit of local government to enact a tax to raise monies not needed by the municipality.

It is well settled that Congress is not in possession of unbridled authority to exercise its powers in a manner which will unduly interfere with powers reserved to the States under the Tenth Amendment. That limitation has been clearly expressed by this Court in its decision in *National League of Cities* v. *Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed. 2d 245 (1976). At issue therein was the constitutionality of 1974 amendments to the Fair Labor Standards Act, 29 *U.S.C.* §201 *et seq.* In those amendments, Congress extended minimum wage and maximum hour provisions to virtually all public employees of the States and their political subdivisions. The amendments were passed as an exercise of Congress' powers granted by the Commerce Clause of the Constitution, Article I, Section 8, Cl. 3.

The Court, recognizing that the Commerce Clause is "a grant of plenary authority to Congress," nonetheless further agreed with the appellants in *National League of Cities* that the commerce power is limited by other affirmative expressions of rights guaranteed by the Constitution. 96 S.Ct. at 2469:

> This Court has never doubted that there are limits upon the power of Congress to override state sovereignty, even when exercising its otherwise plenary powers to tax or to regulate commerce which are conferred by Art. I of the Constitution. 96 S.Ct. at 2470.

The Court specifically rejected *dicta* from *United States* v. *California*, 297 U.S. 175, 56 S.Ct. 421, 80 L.Ed. 567 (1936) which totally denied the authority of a State to challenge an exercise of Commerce Clause authority. 96 S.Ct. at 2475-2476. This led the Court to overrule its earlier decision in *Maryland* v. *Wirtz*, 392 U.S. 183, 888 S.Ct. 2017, 20 L.Ed. 2d 1020 (1968) which had upheld extension of the Fair Labor Standards Act to employees of state hospitals, institutions and schools.

In *Fry* v. *United States*, 421 U.S. 542, 95 S.Ct. 1792, 44 L.Ed. 2d 363 (1975), it was stated:

> While the Tenth Amendment has been characterized as a 'truism,' stating merely that 'all is retained which has not been surrendered,' *United States* v. *Darby*, 312 U.S. 100, 124, 61 S.Ct. 451, 462, 885 L.Ed. 609 (1941), it is not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system . . . 95 S.Ct. at 1795-1796, n.7.

Because the Court in *National League of Cities* concluded that the amendments impaired the ability of the States to effectively function in a federal system, they were held to not be within the authority granted Congress by the Commerce Clause. The Court expressly declined to render an opinion as to whether such limitation might be imposed under the authority granted to Congress as the Spending Power, Article I, Section 8, Clause 1. 96 S.Ct. at 2474, n. 17. However, other decisions have explicitly recognized that the Spending Power is also subject to limitations. In *Charles C. Steward Machine Company* v. *Davis*, 301 U.S. 548, 57 S.Ct. 883, 81 L.Ed. 1279 (1937), the Court upheld provisions of the Social Security Act under which in States

choosing to enact unemployment compensation legislation, a state taxpayer contributing to an unemployment fund may receive credit against federal taxation. Although finding that there was no contravention of the Tenth Amendment in that case, the Court did declare that it would be possible for Congress to enact taxing legislation designed to stimulate or discourage certain conduct which would unduly intrude upon the powers reserved to the States and exceed the bounds of power granted to Congress. 57 S.Ct. at 892. That expression of limitation on the power of Congress has been repeatedly reiterated by the Court. *Lau* v. *Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed. 2d 1 (1974); *Pennhurst State School and Hospital* v. *Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 1540 n. 13.

It is thus apparent that whether the challenged portions of the FWPCA be deemed to have been enacted under the Commerce Clause or under the Spending Power, they are subject to challenge as being beyond the proper boundaries of either of those powers as granted to Congress in the Constitution. It is submitted that by requiring a municipality to enact a particular form of tax, in this instance a user fee, Congress and the EPA, through its regulations implementing the statute, have impermissibly infringed upon the rights reserved to the States by the Tenth Amendment.

Recently, this Court articulated the standards to be applied in determining whether federal legislation violates the Tenth Amendment in *Hodel* v. *Virginia Surface Mining and Reclamation Asscciation, Inc.*, 452 U.S. 265, 101 S.Ct. 2352, 69 L.Ed. 2d 1 (1981). These requirements were enunciated:

> First, there must be a showing that the challenged statute regulates the 'States as States.' Second, the federal regulation must address matters that are in-

> disputably 'attributes of state sovereignty.' And, third, it must be apparent that the States' compliance with the federal law would directly impair their ability 'to structure integral operations in areas of traditional functions.'
>
> 101 S.Ct. at 2366 (citations omitted).

All of these requirements were taken by the Court from language in the *National League of Cities* decision.

In its decision below, the Third Circuit did not really dispute that Sayreville had met the first two of the *Hodel* requirements:

> Because the challenged condition relates to the ways in which Sayreville and other affected state subentities are to raise and allocate revenues, it arguably addresses 'States as States' and in relation to 'attributes of state sovereignty.'
>
> 690 F.2d at 364.

That the user fee requirement regulates the "States as States," and addresse "attributes of state sovereignty," seems beyond challenge. The power to tax has been reserved to the States without any limit except those expressed in the Constitution such as lack of power to tax exports. In *National League of Cities,* the Court had occasion to cite to *Lane County* v. *Oregon,* 7 Wall, 71, 19 L.Ed. 101 (1869) for its statement on the federal structure of our govenment. That decision also establishes that the power to tax is one of the powers contemplated by the Tenth Amendment as having been reserved to the States.

> *Now, to the existence of the States, themselves, necessary to the existence of the United States, the power of taxation is indispensable. It is an essen-*

tial function of government. It was exercised by the Colonies; and when the Colonies became States, both before and after the formation of the Confederation, it was exercised by the new governments. Under the Articles of Confederation the Government of the United States was limited in the exercise of this power to requisitions upon the States, while the whole power of direct and indirect taxation of persons and property, whether by taxes on polls, or duties on imports, or duties on internal production, manufacture or use, was acknowledged to belong exclusively to the States, without any other limitation than that of non-interference with certain treaties made by Congress. The Constitution, it is true, greatly changed this condition of things. It gave the power to tax, both directly and indirectly, to the National Government, and subject to the one prohibition of any tax upon exports and to the conditions of uniformity in respect to indirect and of proportion in respect to direct taxes, the power was given without any express reservation. On the other hand, no power to tax exports or imports, except for a single purpose and to an insignificant extent, or to lay any duty on tonnage, was permitted to the States. In respect, however, to property, business and persons, within their respective limits, their power of taxation remained and remains entire. It is, indeed, a concurrent power, and in the case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, must be preferred; but with this qualification it is absolute. *The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the Legislatures to which the States*

> *commit the exercise of the power.* That discretion is restrained only by the will of the people expressed in the state constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the National Government. *There is nothing in the Constitution which contemplates or authorizes any direct abridgement of this power by national legislation.*
>
> 7 Wall. 76-77 (emphasis added).

The conclusions drawn in the *Lane County* decision have never been overturned, and in fact recent court decisions have reiterated that the power to tax is protected by the Tenth Amendment. In *City of Sault Ste. Marie* v. *Andrus,* 458 F.Supp. 465 (D.D.C. 1978), it was held that "the power to levy a property tax is one of those powers reserved to the states by the Tenth Amendment" and that such power may be delegated to a municipality. 458 F.Supp. at 473. In *Snow* v. *Dixon,* 66 Ill. 2d 443, 363 NE 2d 1052 (1977), *cert.* den. 434 U.S. 939, 98 S.Ct. 429, 52 L.Ed. 2d 298, it was recognized that matters of state taxation are reserved to the States by the Tenth Amendment and are unrestricted if not otherwise unconstitutional. 362 NE 2d at 1062.

The Third Circuit rejected Sayreville's claim on the basis of its conclusion that there was no interference with the freedom to "structure integral operations in areas of traditional governmental functions" because Sayreville need not apply for federal funds. 690 F.2d at 364. This conclusion was reached in reliance upon the generally accepted rule that the federal government may fix the terms on which it disperses money to the States. *Pennhurst State School and Hospital* v. *Halderman,* 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed. 2d 694 (1981); *FERC* v. *Mississippi,* —— U.S. ——, 102 S.Ct. 2126, 72 L.Ed. 2d 532 (1982). It is submitted that while the above cited cases do in-

dicate that Congress may normally attach conditions to grants of federal money, they also recognize that such power is not without limits, and this case presents facts which call for an application of those limits.

In the *Pennhurst* decision, Justice Rehnquist noted the limits on Congress' Spending Power:

> . . . legislation enacted pursuant to the Spending Power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the Spending Power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.' 101 S.Ct. at 1539.

The key word for the purpose of this case is "voluntarily." It is submitted that the Third Circuit erred in accepting at face value the argument that it is entirely up to municipalities to reject federal funds or accept them and therefore agree to comply with the user fee requirements. In *Pennhurst State School* and the cases cited therein, the statutes in question involved the government offering money to States who met certain conditions as an incentive to meet those conditions. However, if the States chose not to accept the money, they were under no obligations. That is not the case under the Federal Water Pollution Control Act. Theoretically, a State or local governmental entity could avoid the need for instituting a user charge by not seeking federal grant funds for construction of treatment works. This possibility exists in theory only and is in no way representative of reality.

Totally apart from whether federal grant funds are sought, this statute imposes obligations on States and

municipalities which must be met. In *State Water Control Board* v. *Train*, 559 F.2d 921 (4th Cir. 1977), it was argued that publicly owned sewage treatment plants which have not received any federal grants need not meet effluent limitations imposed by §301(b)(1) of the FWPCA [33 *U.S.C.* §1311(b)(1)]. That notion was completely rejected by the court.

> . . . effluent limitations are, on their face, unconditional; and no other provision indicates any link between their enforceability and the timely receipt of federal assistance.
>
> 559 F.2d at 924.

This conclusion was echoed by Judge Debevoise in *City of New Brunswick* v. *Borough of Milltown*, 519 F. Supp. 878 (D.N.J. 1981), aff'd 686 F. 2d 120 (3rd Cir. 1982):

> Its [MCUA] obligation to comply with the treatment and discharge requirements of the Clean Water Act is completely independent of the receipt of any financial assistance from the government.
>
> 519 F.Supp. at 885.

The court in *State Water Control Board* went on to discuss the difficulties in financing construction of needed water treatment facilities:

> To assist in financing the facilities necessary to accomplish the effluent reduction mandated by Section 301, Title II of the Act establishes a program of federal grants to states, municipalities and intergovernmental agencies for the construction of publicly owned treatment plants. Section 202(a) provides that the amount of any grant made under this program shall be 75% of approved construction costs;

> and Section 207 authorizes the appropriation of $18 billion for fiscal years 1973 through 1975 for such grants.
>
> Unfortunately, however, the grant program's effectiveness in facilitating compliance with the 1977 effluent limitations has been limited. Grants have not been available for many construction projects because the money authorized by Section 207 is insufficient to finance 75% of the cost of every needed sewage treatment plant in the country. Moreover, disbursement of the authorized funds has been substantially delayed by Presidential impoundment and by the time consumed by administrative processing of grant applications. *These problems, together with the fiscal difficulties now confronting most State and local governments, have made it economically impossible for many localities to accomplish the required effluent reductions by the 1977 deadline.* 559 F.2d at 923-924 (emphasis added) (footnotes omitted).

It is clear from the above quotation that it has been difficult if not impossible for many States and municipalities to meet the requirements imposed by the FWPCA even with federal grant money, and so to argue that it is realistic for Sayreville, MCUA or any other State or local government to comply with the statute without applying for grant money is to ignore all notions of practicality. The FWPCA simply does not allow a municipality such as the Borough of Sayreville to evade the currently existing clean water standards in the statute by declining to request federal funds.

Given the conclusion in the *State Water Control Board* decision, it would be grossly unfair to apply the doctrine that the federal government may freely tie conditions to

the disbursement of federal money. The case most generally relied upon for that proposition is *State of Oklahoma* v. *United States Civil Service Commission,* 330 U.S. 127, 67 S.Ct. 544, 91 L.Ed. 794 (1947). At issue therein was the constitutionality of the Hatch Act, 18 *U.S.C.* §61 et seq. Specifically questioned was the provision which barred any officer or employee of a State or locality whose principal employment was in connection with an activity financed in whole or part by loans or grants from the United States from taking an active part in political management or political campaigns. There was a total lack of any affirmative obligations placed on a recipient of federal funds. Oklahoma was totally free to reject federal funds and keep the particular employee involved as Highway Commissioner. The only penalty was the loss of highway grant funds equivalent to the salary payments to this employee. That situation is a far cry from deciding whether or not to meet the conditions for receipt of federal funds needed to comply with binding requirements which involve the expenditure of untold millions.

Other cases which may be cited in support of this principle are equally distinguishable. *State of North Carolina ex. rel. Morrow* v. *Califano,* 445 F.Supp. 532 (E.D.N.C. 1977), aff'd 435 U.S. 962, 98 S.Ct. 1597 (1978) dealt with the National Health Planning and Resources Development Act of 1974, 42 *U.S.C.* §300k et seq. That statute made federal funds available to States which agreed to establish a health planning and development agency to administer a state health program requiring usage of a certificate of need. The North Carolina Supreme Court held that such a program could not be implemented in North Carolina without an amendment to the state constitution. North Carolina then challenged the statute arguing that it was being coerced to comply. It did not challenge the general rule that the federal government may attach conditions to the grant-

ing of funds, but argued that the need to amend its state constitution constituted coercion "under the unique circumstances applicable to it." 445 F.Supp. at 535. The court rejected this argument noting that its acceptance would allow states to evade otherwise valid conditions by obtaining a state court decision similar to the one in North Carolina thus leaving enforcement of the conditions to the quirks of local law. What is significant is that the federal statute was one devoid of any compulsion in the form of action that a State must take even if it chooses to do without any federal funding. See *Greater St. Louis Health Systems Agency* v. *Teasdale,* 506 F.Supp. 23 (E.D. Mo. 1980).

Texas Landowners Rights Association v. *Harris,* 453 F. Supp. 1025 (D.D.C. 1978), aff'd 598 F.2d 311 (D.C. Cir.) *cert. den.* 444 U.S. 927 (1979) dealt with the National Flood Insurance Program, 42 *U.S.C.* §4001-4128. Under that statute, federal assistance for a program of flood insurance would be denied unless localities participated in the federal program, which meant adoption of local flood plain management measures. The argument against the constitutionality of that statute amounted to no more than the statement that the plaintiffs would lose more by not participating than they would gain by becoming part of the program and so they were being unlawfully coerced. Once again, the statute made no demands on any local goverment which chose to forego receipt of a federal grant.

Nor can reliance be placed on the fact that protection of the environment is an important and legitimate federal concern. In the past, when the EPA has sought to order States to establish particular programs to meet federal specifications, three different Circuit Courts, all citing to the Tenth Amendment, found such action unconstitutional. *Maryland* v. *EPA,* 530 F.2d 215 (4th Cir. 1975), vacated and remanded *per curiam sub nom EPA* v. *Brown,* 431 U.S. 99

(1977); *District of Columbia* v. *Train*, 521 F.2d 971 (D.C. Cir. 1975), vacated and remanded *per curiam sub nom EPA* v. *Brown*, 431 U.S. 99 (1977); *Brown* v. *EPA*, 521 F.2d 827 (9th Cir. 1975), vacated and remanded *per curiam*, 431 U.S. 99 (1977).* The only contrary decision, *Pennsylvania* v. *EPA*, 500 F.2d 246 (3d Cir. 1974), relied on the decision in *Maryland* v. *Wirtz*, *supra*, which was overruled in *National League of Cities*.

In *Brown* v. *EPA*, it was accepted by all parties and the court that Congress had full power to regulate air pollution, and from that the EPA argued that the power existed to direct a State to incorporate in its laws regulations designed to control air pollution properly promulgated by the Administrator of EPA. This was rejected on the grounds that the Commerce Power does not allow Congress to require a State to undertake governmental tasks. Reliance was placed on the language in *Fry* v. *United States*, *supra*, regarding the limitations on congressional power expressed in the Tenth Amendment. See 521 F.2d at 837-842.

In considering the same issue in *District of Columbia* v. *Train*, the District of Columbia Circuit addressed the language in *Fry* regarding the 'fashion" in which Congress exercises power that has been granted to it by the Constitution:

> In other words, the Tenth Amendment may prevent Congress from selecting methods of regulating

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* The three decisions vacated and remanded in *EPA* v. *Brown* were all on the basis of the controversies having become moot due to the repeal of certain EPA regulations and the concession that those remaining in controversy would be invalid unless modified.

> which are 'drastic' invasions of state sovereignty where less intrusive approaches are available.
>
> 521 F.2d at 994.

Requiring a State to enact statutes and regulations was found to be a "drastic" intrusion on state sovereignty.

In *State of Maryland* v. *EPA*, the court technically did not reach the constitutional issue, premising its decision on a statutory construction that EPA lacked the authority to require a State to pass legislation. Nonetheless, *Brown* v. *EPA* was cited approvingly, and commenting upon EPA regulations requiring Maryland to adopt statutes and regulations, the court said that "we are of opinion their constitutional validity is very doubtful at the very best . . ." 530 F.2d at 226.

In his concurring opinion in *National League of Cities*, Justice Blackmun indicated that an overriding federal interest such as environmental protection may outweigh what would otherwise be an impermissible infringement on the powers reserved by the Tenth Amendment. It is submitted that the three Circuit Court decisions which reached this Court in *EPA* v. *Brown, supra*, subsequent to *National League of Cities*, indicate that interest in environmental protection is not enough to allow the federal government to impose on the States in violation of the Tenth Amendment. While in *Hodel* this Court cited to Justice Blackmun's statement, it did so only for the general proposition that some federal interests might justify State submission notwithstanding the Tenth Amendment. See 101 S.Ct. at 2366, n. 29. As Justice O'Connor noted in her dissent in *FERC* v. *Mississippi*, the Court has not yet explored the circumstances that might justify an exception to the standards set forth in *Hodel*. 102 S.Ct. at 2147, n. 4.

A writ of certiorari should issue so that the Court can give content to Justice Rehnquist's indication in the *Pennhurst* case that there are limits to the constitutional ability of Congress to place conditions on a grant of federal funds. This case presents facts which call for the Court to indicate to the lower federal courts that they must not automatically uphold all Congressional action simply because it deals with federal funds.

CONCLUSION

For the foregoing reasons, it is respectfully urged that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Dated: January 6, 1983